

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

PHILIP W. McCLURE,

Petitioner,

v.

BRIAN BELLEQUE,

Superintendent, Oregon State Penitentiary,

Respondent.

No. 3:09-cv-00421-PK

**ORDER ADOPTING FINDINGS AND
RECOMMENDATION**

SIMON, District Judge.

On March 5, 2012, Magistrate Judge Paul Papak issued Findings and Recommendation (#66) in the above-captioned case. Judge Papak recommended that this court deny the Petition for Writ of Habeas Corpus (#2), enter judgment dismissing this case with prejudice, and decline to issue a certificate of appealability under 28 U.S.C. § 2253(c). The matter is now before me pursuant to the Magistrates Act, 28 U.S.C. § 636(b)(1)(B), and Rule 72(b) of the Federal Rules of Civil Procedure. Under the Magistrates Act, the court may “accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate’s findings and recommendations, “the court shall make a *de novo* determination of those portions of the report or specified proposed findings or

recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3); *Dawson v. Marshall*, 561 F.3d 930, 932 (9th Cir. 2009). *De novo* review means that the court “considers the matter anew, as if no decision had been rendered.” *Dawson*, 561 F.3d at 933.

Petitioner McClure has filed timely objections to Judge Papak’s Findings and Recommendation. After *de novo* review, I ADOPT Judge Papak’s Findings and Recommendation (#66) for the reasons stated therein. Accordingly, the Petition for Writ of Habeas Corpus (#2) is DENIED, and this case is dismissed with prejudice. Because the Petitioner has not made a substantial showing of the denial of a constitutional right, I do not issue a certificate of appealability pursuant to 28 U.S.C. § 2253(c).

Dated this 14th day of June, 2012.



Michael H. Simon
United States District Judge